

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Shonn Raphelle McCain,)	C/A 0:11-1737-JFA-PJG
)	
Plaintiff,)	
vs.)	ORDER
)	
Warden D. Drew; Food Adm. Mr. Kinnion;)	
Food Service Supervisor Mr. Stremcuic;)	
)	
Defendants.)	

The *pro se* plaintiff, Shonn Raphelle McCain, is incarcerated at Federal Correctional Institution in Bennettsville, South Carolina. He brings this action pursuant to the Federal Tort Claims Act alleging that the defendants' negligence resulted in his suffering a serious burn injury while working at his assigned prison kitchen job.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein she suggests that this action should be dismissed without prejudice because the action is premature. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

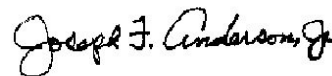
The plaintiff was advised of his right to submit objections to the Report and Recommendation, which was filed on August 23, 2011. The plaintiff responded to the Report advising the court that he is currently in the process of complying with the exhaustion requirements.

The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680 requires that before a claimant may bring such an action in this court to recover damages, the plaintiff must first present the claim to the appropriate federal agency for exhaustion. The Federal Bureau of Prisons has adopted a procedure for inmates to file such a claim. As the Magistrate Judge correctly notes in her Report, this court is without jurisdiction to hear this case until the plaintiff complies with the strict provisions of the FTCA for filing an administrative claim.

Additionally, it is clear from the plaintiff's response to the Report that he has not exhausted his administrative remedies as required. This court agrees with the Magistrate Judge that the case is premature and subject to summary dismissal.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge

October 5, 2011
Columbia, South Carolina